

# SMITH MOORE LLP

October 1, 2007

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CC:PA:LPD:PR (REG-142695-05)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

REG-142695-05

LEGAL PROCESSING DIVISION  
PUBLICATION & REGULATIONS  
BRANCH

Re: Cafeteria Plan Regulations

Dear Sir(s) and/or Madame(s):

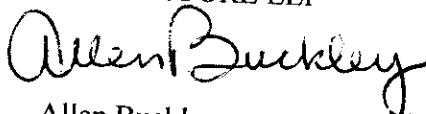
Please consider the following comment letter with respect to the proposed cafeteria plan regulations that were issued on August 6, 2007.

I am writing to suggest that an alternative to the uniform coverage rule of Reg. §1.125-5(d) relating to flexible spending accounts be added to the final regulations. In this regard, I do not believe that a statutory basis exists for the uniform coverage rule. No mention of such a concept exists in the legislative history of Code §125. The alternative would allow for payment of medical expenses only from an existing balance in a flexible spending account (FSA), and also allow a participant to request and receive reimbursements after the FSA account has been depleted with respect to medical expenses incurred during the year. For example, if a participant elected to contribute \$250 per month to his FSA account, assuming employment throughout the entire year, \$3,000 would have been contributed by the end of the year. If the participant underwent a \$10,000 operation on the second day of the plan year under a health care arrangement that required him to pay \$3,000 of the cost, when no contributions had yet been made to the FSA account, the participant could receive nothing immediately from the FSA account. However, thereafter, the employee could request and receive reimbursements from his FSA account to the extent funded to reimburse him up to the \$3,000. With the exception of certain executives of publicly-traded corporations, nothing prevents a company from loaning money to an employee.

Thank you for considering this comment.

Sincerely,

SMITH MOORE LLP



Allen Buckley

AB/ajr

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